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Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

JAMES HIBERT,) Case No. <u>'11CV0870 H BGS</u>
)
Plaintiff,) COMPLAINT FOR VIOLATION
) OF FEDERAL FAIR DEBT
vs.) COLLECTION PRACTICES ACT,
) ROSENTHAL FAIR DEBT
ENHANCED RECOVERY) COLLECTION PRACTICES ACT,
COMPANY, LLC,) AND TELEPHONE CONSUMER
) PROTECTION ACT
Defendant.)
_____)

I. INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et seq.* (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection Practices Act, Cal Civ Code §1788, *et seq.* (hereinafter "RFDCPA"), both of which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices. Ancillary to the claims above, Plaintiff further alleges claims for

1 Defendant's violations of the Telephone Consumer Protection Act., 47 U.S.C.
2 §227, *et seq.* (hereinafter "TCPA").
3

4 **II. JURISDICTION**

5 2. Jurisdiction of this Court arises under 15 U.S.C. §1692k (d).
6

7 **III. PARTIES**

8 3. Plaintiff, James Hibert ("Plaintiff"), is a natural person residing in
9 San Diego county in the state of California, and is a "consumer" as defined by the
10 FDCPA, 15 U.S.C. §1692a(3) and is a "debtor" as defined by Cal Civ Code
11 §1788.2(h).
12

13 4. At all relevant times herein, Defendant, Enhanced Recovery
14 Company, LLC, ("Defendant") was a company engaged, by use of the mails and
15 telephone, in the business of collecting a debt from Plaintiff which qualifies as a
16 "debt," as defined by 15 U.S.C. §1692a(5), and a "consumer debt," as defined by
17 Cal Civ Code §1788.2(f). Defendant regularly attempts to collect debts alleged to
18 be due another, and therefore is a "debt collector" as defined by the FDCPA, 15
19 U.S.C. §1692a(6), and RFDCPA, Cal Civ Code §1788.2(c).
20
21

22 **IV. FACTUAL ALLEGATIONS**

23 5. At various and multiple times prior to the filing of the instant
24 complaint, including within the one year preceding the filing of this complaint,
25 Defendant contacted Plaintiff in an attempt to collect an alleged outstanding debt.
26
27
28

1 6. Defendant left several voicemails for Plaintiff wherein the caller is
2 an automated voice. The voicemail seems to start in the middle of the automated
3 tape, as the voice starts in the middle of a sentence. The voice does not identify
4 the name of the Defendant or the reason for the call. Defendant's phone number,
5 a website, and a reference number are provided.
6
7

8 7. Defendant has not provided Plaintiff with anything in writing
9 regarding the alleged debt that they are attempting to collect from Plaintiff.
10

11 8. Plaintiff's counsel sent two letters to Defendant in attempt to obtain
12 information regarding the alleged debt. To date, Defendant has failed to respond
13 to these requests.
14

15 9. Defendant's conduct violated the FDCPA and the RFDCPA in
16 multiple ways, including but not limited to:
17

- 18 a) Failing to notify Plaintiff during the initial
19 communication with Plaintiff that the
20 communication was an attempt to collect a debt
21 and any information obtained would be used for
22 that purpose, including, but not limited to, leaving
23 several automated voicemails for Plaintiff where
24 Defendant did not identify itself or its reason for
25 calling (§1692e(11));
26
27 b) Failing to notify Plaintiff during each collection
28 contact that the communication was from a debt
collector, including, but not limited to, leaving
several automated voicemails for Plaintiff where
Defendant did not identify itself or its reason for
calling (§1692e(11));

- c) Causing a telephone to ring repeatedly or continuously to annoy Plaintiff, including, but not limited to, calling Plaintiff excessively and leaving automated voicemails (Cal Civ Code §1788.11(d));
- d) Communicating, by telephone or in person, with Plaintiff with such frequency as to be unreasonable and to constitute an harassment to Plaintiff under the circumstances, including, but not limited to, calling Plaintiff excessively and leaving automated voicemails (Cal Civ Code §1788.11(e));
- e) Causing Plaintiff's telephone to ring repeatedly or continuously with intent to harass, annoy or abuse Plaintiff, including, but not limited to, calling Plaintiff excessively and leaving automated voicemails (§ 1692d(5));
- f) Communicating with Plaintiff at times or places which were known or should have been known to be inconvenient for Plaintiff, including, but not limited to, calling Plaintiff excessively and leaving automated voicemails (§1692c(a)(1));
- g) Failing to disclose the caller's individual identity in a telephone call to Plaintiff, including, but not limited to, leaving several automated voicemails on Plaintiff's cell phone wherein the caller and company were not identified (§1692d(6)); and
- h) Failing to disclose Defendant's true corporate or business name in a telephone call to Plaintiff, including, but not limited to, leaving several automated voicemails on Plaintiff's cell phone wherein the caller and company were not identified (§1692d(6)).

10. Defendant conduct violated the TCPA by:

- a) using any automatic telephone dialing system or an artificial or pre-recorded voice to any telephone number assigned to a

1 paging service, cellular telephone service, specialized mobile
2 radio service, or other radio common carrier service, or any
3 service for which the called party is charged for the call (47
4 USC §227(b)(A)(iii)).

5 11. As a result of the above violations of the FDCPA, RFDCPA, and
6 TCPA, Plaintiff suffered and continues to suffer injury to Plaintiff's feelings,
7 personal humiliation, embarrassment, mental anguish and emotional distress, and
8 Defendant is liable to Plaintiff for Plaintiff's actual damages, statutory damages,
9 and costs and attorney's fees.
10

11 **COUNT I: VIOLATION OF FAIR DEBT**
12 **COLLECTION PRACTICES ACT**
13

14 12. Plaintiff reincorporates by reference all of the preceding paragraphs.
15

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff respectfully prays that judgment be entered
18 against the Defendant for the following:

- 19 A. Declaratory judgment that Defendant's conduct
20 violated the FDCPA;
21 B. Actual damages;
22 C. Statutory damages;
23 D. Costs and reasonable attorney's fees; and,
24 E. For such other and further relief as may be just and proper.
25

26 **COUNT II: VIOLATION OF ROSENTHAL**
27 **FAIR DEBT COLLECTION PRACTICES ACT**
28

13. Plaintiff reincorporates by reference all of the preceding paragraphs.

1 14. To the extent that Defendant's actions, counted above, violated the
2 RFDCPA, those actions were done knowingly and willfully.
3

4 15. Further, §1788.17 of the RFDCPA mandates that every debt
5 collector collecting or attempting to collect a consumer debt shall comply with
6 the provisions of Sections 1692b to 1692j, inclusive, of, and shall be subject to
7 the remedies in Section 1692k of, Title 15 of the United States Code statutory
8 regulations contained within the FDCPA, *15 U.S.C. §1692d, and §1692d(5)*.
9
10

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff respectfully prays that judgment be entered
13 against the Defendant for the following:
14

- 15 A. Declaratory judgment that Defendant's conduct
16 violated the RFDCPA;
17
18 B. Actual damages;
19
20 C. Statutory damages for willful and negligent violations;
21 D. Costs and reasonable attorney's fees,
22 E. For such other and further relief as may be just and proper.

23 **COUNT III: VIOLATION OF TELEPHONE CONSUMER**
24 **PROTECTION ACT**

25 16. Plaintiff reincorporates by reference all of the preceding paragraphs.

26 17. To the extent that Defendant's actions, counted above, violated the
27 TCPA, those actions were done knowingly and willfully.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the
Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the TCPA;
- B. Actual damages;
- C. Statutory damages for willful and negligent violations;
- D. Costs and reasonable attorney's fees,
- E. For such other and further relief as may be just and proper.

PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY

Respectfully submitted this 23rd day of April, 2011.

By: s/Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman, P.C.
Attorney for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JAMES HIBERT

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Law Offices of Todd M. Friedman, P.C.
369 S. Doheny Dr., #415, Beverly Hills, CA 90211

DEFENDANTS

ENHANCED RECOVERY COMPANY, LLC

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

'11CV0870 H BGS**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 USC 1692

Brief description of cause:
Violation of the Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

04/23/2011

s/Todd M. Friedman

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.